

March 18, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2012-
2013 Administrative Review of the Antidumping Duty Order on 1-
Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's
Republic of China

SUMMARY

In response to a request from an interested party, the Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty (“AD”) order on 1-hydroxyethylidene-1, 1-diphosphonic acid (“HEDP”) from the People’s Republic of China (“PRC”) for the period of review (“POR”) April 1, 2012, through March 31, 2013. The Department preliminarily determined that Shandong Taihe Chemicals Co., Ltd. (“STCC”) sold subject merchandise in the United States at prices below normal value (“NV”).

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess AD duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the “Act”).

Background

On April 28, 2009, the Department published in the *Federal Register* an AD order on HEDP from the PRC.¹ On April 2, 2013, the Department published in the *Federal Register* a notice of opportunity to request administrative review on HEDP from the PRC.² On April 30, 2013, the

¹ See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India and the People’s Republic of China: Antidumping Duty Orders*, 74 FR 19197 (April 28, 2009) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 78 FR 19645 (April 2, 2013).

Department received a timely request for review from STCC. The Department has not received any communication from Compass Chemical International LLC, the Petitioner in the underlying investigation. On June 3, 2013, the Department published in the *Federal Register* a notice of initiation of the review covering STCC.³ The Department received from STCC timely responses to the original and all supplemental questionnaires between July 11, 2013, and February 28, 2014.

Period of Review

The POR is April 1, 2012, through March 31, 2013.

Extension of Preliminary Results

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁴ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. On January 10, 2014, we extended the deadline for the preliminary results by an additional 60 days.⁵ Therefore, the revised deadline for the preliminary results of this review is now March 18, 2014.⁶

Scope of the Order

The merchandise subject to the order includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid,⁷ also referred to as hydroxyethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809-21-4. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the order is dispositive.

DISCUSSION OF THE METHODOLOGY

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 33052 (June 3, 2013) ("*Initiation Notice*").

⁴ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

⁵ See Memorandum from Jamie Blair-Walker through Abdelali Elouaradia to Christian Marsh regarding "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review" (January 10, 2014).

⁶ The deadline for the preliminary results of this review was March 17, 2014. Due to the closure of the Federal Government in Washington, DC on March 17, 2014, the Department reached this determination on the next business day (*i.e.*, March 18, 2014). See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁷ C₂H₈O₇P₂ or C(CH₃)(OH)(PO₃H₂)₂

Non-Market Economy Country

The Department considers the PRC to be a non-market economy (“NME”) country.⁸ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Separate Rate

There is a rebuttable presumption that all companies within an NME are subject to government control and, thus, should be assessed a single AD rate.⁹ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁰ It is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.¹¹ To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,¹² as amplified by *Silicon Carbide*.¹³ However, if the Department determines that a company is wholly foreign-owned or located in a market economy (“ME”), then a separate rate analysis is not necessary to determine whether it is independent from government control.¹⁴

As noted above, the Department initiated upon only a single company. The Department did not receive any separate rate applications or certifications from another company besides the sole mandatory respondent. Therefore, the Department only analyzed whether STCC has demonstrated an absence of *de jure* and *de facto* government control over its respective export activities.

A. Absence of *De Jure* Control

⁸ See *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

⁹ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079, 53082 (September 8, 2006); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People’s Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

¹⁰ See *Initiation Notice*, 78 FR at 33053-54.

¹¹ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”).

¹² See *id.*

¹³ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”).

¹⁴ See *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People’s Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.¹⁵

The evidence provided by STCC supports a preliminary finding of an absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.¹⁶

B. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EP") are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.¹⁷ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence provided by STCC supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation showing that STCC: (1) sets its own EPs independent of the government and without the approval of a government authority; (2) has the authority to negotiate and sign contracts and other agreements; (3) maintains autonomy from the government in making decisions regarding the selection of management; and (4) retains the proceeds of its respective export sales and makes independent decisions regarding disposition of profits or financing of losses.¹⁸

Therefore, the evidence placed on the record of this review by the mandatory respondent demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*.

Surrogate Country and Surrogate Value Data

¹⁵ See *Sparklers*, 56 FR at 20589.

¹⁶ See Letter from STCC to the Department regarding "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China." Section A Questionnaire Response - Shandong Taihe Water Treatment Co., Ltd. and Shandong Taihe Chemicals Co., Ltd." (July 10, 203) ("SAQR").

¹⁷ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

¹⁸ See SAQR.

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOP, the Department shall utilize, to the extent possible, the prices or costs of FOP in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.¹⁹ The Department determined that Colombia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand are countries with *per capita* gross national incomes ("GNI") that are comparable to the PRC.²⁰

On August 5, 2013, the Department received surrogate country comments from STCC.²¹ STCC suggested using India as the surrogate country because it was the surrogate country in the antidumping duty investigation, none of the countries on the Surrogate Country Memo are producers of comparable merchandise, and India has more available surrogate value ("SV") information. No other parties commented on the selection of a surrogate country.

Economic Comparability

Because the Department has determined the PRC to be an NME, and available information does not permit the NV of the subject merchandise to be determined under section 773(a) of the Act, section 773(c) of the Act directs that then the NV shall be determined on the basis of the value of the FOPs. Section 773(c)(1) of the Act also provides that the valuation of the FOPs shall be based on the best available information regarding the values of such factors in a market economy country considered to be appropriate. Section 773(c)(4) of the Act requires, to the extent possible, that the Department value the FOPs in a surrogate country that is: (A) at a level of economic development comparable to the PRC; and (B) a significant producer of comparable merchandise. Using 2011 GNI data, the Department provided parties with a list of potential surrogate countries (*i.e.*, Colombia, Costa Rica, Indonesia, the Philippines, South Africa and Thailand) found to be at the same level of economic development as the PRC.²²

As stated above, STCC suggested using India as a surrogate country, although it was not listed on the Office of Policy's list of countries that are considered to be at the same level of economic development to the PRC. Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may determine that a country is at a level of economic development comparable to the NME country. However, section 351.408(b) of the Department's regulations

¹⁹ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("*Policy Bulletin*").

²⁰ See Letter to All Interested Parties from Robert Bolling, Program Manager, Office 4 regarding 2012-2013 Antidumping Duty Administrative Review of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information (July 5, 2013) at Attachment I ("Surrogate Country Memo") at 2.

²¹ See Letter to the Department regarding "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Antidumping Duty Administrative Review: Surrogate Country Selection Comments", dated August 5, 2013.

²² See *id.*

states that in making this determination the Department will place primary emphasis on per capita GDP as the measure of whether the surrogate country is at the same level of economic development as the NME country. It is the Department's long-standing practice to identify countries at the same level of economic development as the PRC on the basis of per capita GNI data reported in the World Bank's World Development Report.²³ In this case, the GNI data published in 2012 was based on data from the year 2011.²⁴

As explained in our Surrogate Country Memo, on the basis of GNI, the Department considers Colombia, Costa Rica, Indonesia, the Philippines, South Africa and Thailand all to be at the same level of economic development as the PRC for surrogate country-selection purposes.²⁵ The annual GNI levels for the list of potential surrogate countries ranged from US\$ 2,210 to US\$ 7,660.²⁶ Although the Department finds India to be less economically comparable to the PRC than the other countries listed in the Surrogate Country Memo, the Department also examines whether or not the countries are significant producers of identical or comparable merchandise, as discussed below.

Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."²⁷ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country. Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.²⁸

STCC asserts that the Department should select India as a surrogate country because it is a significant producer of comparable merchandise, whereas none of the countries listed in the Surrogate Country Memo are significant producers of comparable merchandise.²⁹ After

²³ See *Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) ("Pure Magnesium 08-09") and accompanying Issues and Decision Memorandum at Comment 4.

²⁴ See Surrogate Country Memo at 2.

²⁵ See *id.*, at 1.

²⁶ See *id.*, at 2.

²⁷ See *Policy Bulletin*, at 2.

²⁸ See *Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("To impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

²⁹ See Letter to the Department regarding "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Antidumping Duty Administrative Review: Surrogate Country Selection Comments", dated August 5, 2013.

analyzing the export data at the 10-digit HTS numbers included in the scope, the Department finds that none of the countries listed in the Surrogate Country Memo are significant producers of comparable merchandise. Therefore, although the Department considers India to be less economically comparable to the PRC than the other countries listed in the Surrogate Country Memo, record evidence shows that India is a significant producer of comparable merchandise.³⁰

Data Availability

As noted above, STCC asserts that India should be selected as a surrogate country because it has more publicly available surrogate value data. The only country for which parties submitted SV data is India. As noted, no other countries on the Surrogate Country Memo are significant producers of comparable merchandise

Thus, based on record evidence, the Department preliminarily determines that India is the most appropriate primary surrogate country for purposes of this administrative review. Although the Department considers India to be less economically comparable to the PRC, the Department preliminarily determines that it is a significant producer of comparable merchandise and represents the best available data for calculating surrogate values.

SV Comments

On August 9, 2013, STCC filed surrogate value comments. A clarification of previously submitted factual information and updated SV comments were submitted by STCC on August 19, 2013, and September 12, 2013. No other parties submitted SV comments. For a detailed discussion of the SVs used in this review, see the “Factor Valuation” section below and the SV Memorandum, issued concurrently with this memorandum.³¹

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” In *Allied Tube*, the CIT noted that a “party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to ‘satisfy’ the Department that ‘a different date better reflects the date on which the exporter or producer establishes the material terms of sale.’”³² Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date

³⁰ Previously, the International Trade Commission (“ITC”) found that the only significant producers of HEDP are the PRC, India, and the United Kingdom. See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from China and India*, USITC Investigation Nos. 731-TA-1146-1147 (Final), Publication Number 4072 (April 2009) (“ITC Final Determination”), at 7-15 and IV-2.

³¹ See Memorandum to the File from Jamie Blair-Walker through Robert Bolling regarding “Surrogate Value Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China” (“SV Memorandum”) issued concurrently with this memorandum.

³² See *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (“*Allied Tube*”).

better reflects the date on which the exporter or producer establishes the material terms of sale.³³ These normally include the price, quantity, delivery terms and payment terms.³⁴ STCC claims that the date of sale should be the date recorded in the Accounts Receivable field. STCC states that this date is when the company receives the invoice from its affiliated producer for the resale of subject merchandise.³⁵ However, the Department notes that STCC stated that the commercial invoice was issued to the unaffiliated U.S. customer after the terms of the resale were finalized. Therefore, the Department has preliminarily determined to use the invoice date as the date of sale.

Fair Value Comparisons

To determine whether the respondent's sales of subject merchandise were made at less than NV, we compared EP to NV, as described in the "Export Price" and "Normal Value" sections below.³⁶

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices ("CEPs")) (the average-to-average method) unless the Department determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.³⁷ In recent investigations and reviews, the Department applied a "differential pricing" analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B)

³³ See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

³⁴ See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

³⁵ See Letter from STCC to the Department, regarding "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China Antidumping Duty Administrative Review: Section C Questionnaire Response - Shandong Taihe Water Treatment Co., Ltd. and Shandong Taihe Chemicals Co., Ltd" (July 22, 2013) ("SCQR"), at 9.

³⁶ In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews").

³⁷ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

of the Act.³⁸ The Department finds the differential pricing analysis used in those recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, city name, zip code, *etc.*) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed

³⁸ See *Xanthan Gum from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), unchanged in *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013), unchanged in *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013); see also *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, FR 78 21101 (April 9, 2013), unchanged in *Certain Steel Threaded Rod From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013); see also *Certain Lined Paper Products From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 34640 (June 10, 2013) unchanged in *Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65274 (October 31, 2013).

thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

The Department finds that none of STCC's export sales confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time

periods.³⁹ As such, the Department finds that these results do not support consideration of an alternative to the average-to-average method. Accordingly, the Department has determined to use the average-to-average method in making comparisons of EP and NV for STCC.⁴⁰

U.S. Price

Export Price

In accordance with section 772(a) of the Act, EP is “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. We used the EP methodology, in accordance with section 772(a) of the Act, for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States and for sales in which CEP was not otherwise indicated. We find that all of STCC’s sales in this review are EP sales.⁴¹

We based EP on the price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, domestic brokerage and handling, and billing adjustments, as applicable.

Value Added Tax

The Department recently announced a change of methodology regarding the calculation of EP and CEP to include an adjustment for the amount of any unrefunded VAT in certain NMEs, in accordance with section 772(c)(2)(B) of the Act.⁴² Information placed on the record of this review by the respondents demonstrates that the VAT rate during the POR was 17 percent, and that there was a VAT rebate rate of 13 percent applicable to exports of the merchandise under consideration.⁴³ In order to calculate a price net of VAT, we adjusted the net price reported by STCC for the unrefunded VAT.⁴⁴

³⁹ See Memorandum to the File from Jamie Blair-Walker through Robert Bolling on the subject of “Analysis for the Preliminary Results of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Shandong Taihe Water Treatment Co., Ltd.” (“Analysis Memorandum”) issued concurrently with this memorandum.

⁴⁰ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Final Modification for Reviews*.

⁴¹ See SCQR at 7.

⁴² See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).

⁴³ See SCQR at 26.

⁴⁴ See Analysis Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; and (3) representative capital costs. The Department used FOPs reported by the respondents for materials, labor, packing and by-products. More information regarding the specific FOPs used by the Department can be found in the SV Memorandum, issued concurrently with this memorandum.⁴⁵

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by the respondents for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting SVs, we considered the quality, specificity, and contemporaneity of the data.⁴⁶ As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import SVs the surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.*⁴⁷

Furthermore, with regard to India import-based SVs, we disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, Thailand, and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.⁴⁸ Therefore, it is reasonable to infer that all exports to all markets from these

⁴⁵ See SV Memorandum.

⁴⁶ See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; see also *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

⁴⁷ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) ("*Sigma Corp.*").

⁴⁸ See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

countries may be subsidized.⁴⁹ Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.⁵⁰ Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.⁵¹ Therefore, we have not used prices from these countries in calculating the India import-based SVs.

For the preliminary results, except where noted below, we used data from the Indian import statistics in Global Trade Atlas ("GTA") and other publicly available Indian sources in order to calculate SVs for the respondent's FOPs (*i.e.*, direct materials and by-products) and certain movement expenses. As noted above, when selecting the best available information for valuing FOP, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.⁵² The record shows that Indian import statistics obtained through GTA are contemporaneous with the POR, product-specific, and tax-exclusive.

We valued phosphorus trichloride using the 2011-2012 financial statements from Rencal Chemicals (India) Ltd. ("Rencal Chemicals"), which contains price data specific to the FOP.⁵³ As the data from Rencal Chemicals' financial statements are from April 2011 through March 2012, we adjusted it using WPI data. We note that the Rencal Chemicals produces identical merchandise. Further, we note that Indian import data does not contain imports for HTS code 2812.10.20. Although HTS code 2812.10.21 contains Indian data for the 2011-2012 POR, the Department is concerned about the reliability of this data. A United Nations Environment Programme report states that "production and export of phosphorus trichloride is stringently controlled under the International Chemical Weapons Convention"⁵⁴ Thus, due to the control on exportation of phosphorus trichloride, the Department has concern that the GTA import data

⁴⁹ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

⁵⁰ See Conference Report, at 590; see also *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

⁵¹ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004) ("Chlorinated Isos Prelim"), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

⁵² See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

⁵³ See Letter to the Department from STCC regarding "1-Hydroxyethylidene-1, 1-Diphosphoric Acid (HEDP) from the People's Republic of China: Response to Surrogate Value Supplemental Questionnaire", dated January 6, 2014, at Exhibit 1.

⁵⁴ See SV Memorandum at Exhibit II at 6.

does not reflect trade of phosphorus trichloride and would not represent a good source with which to value STCC's FOP. Therefore, the Department preliminarily finds that Rencal Chemicals' financial statements are the best source for publicly available data that is specific to STCC's FOP.

We valued hydrochloric acid using prices published in *Chemical Weekly*. In order to be specific and contemporaneous, we adjusted the price for purity and inflated it using WPI data.

We preliminarily determined that acetyl chloride is a co-product. The National Association of Accountants ("NAA") defines a joint product as two or more products so related that one cannot be produced without producing the other(s), each having relatively substantial value and being produced simultaneously by the same process up to a split-off point.⁵⁵ The NAA defines a by-product as a secondary product recovered in the course of manufacturing a primary product, whose total sales value is relatively minor in comparison with the sales value of the primary product(s).⁵⁶ In a similar vein, it has been noted that the products in a jointly produced group often vary in importance.⁵⁷ Products of greater importance are termed major products and products of minor importance are termed by-products. When two or more major products appear in the same group, they are called co-products.⁵⁸ The term joint product includes major products, by-products, and co-products because all are jointly produced.⁵⁹

The Department looks to several factors in order to determine which joint products are to be considered co-products and which are to be considered by-products.⁶⁰ Among these factors are the following: 1) how the company records and allocates costs in the ordinary course of business, in accordance with its home country GAAP; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; and 5) whether the product requires significant further processing after the split-off point. No single factor is dispositive in our determination. Rather, we consider each factor in light of all of the facts and circumstances surrounding the case.

The first factor is how the company allocates costs in the ordinary course of business. In the normal course of business, STCC tracks the quantities of acetyl chloride produced and records the quantities in its normal books and records.⁶¹ In addition, STCC does not record the sale as an offset to sales revenue.⁶² As differences between the relative values of joint products influence

⁵⁵ See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011*, 78 FR 36168 (June 17, 2013) and accompanying Issues and Decision Memorandum at Comment 14.

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See *Final Results of Antidumping Finding Administrative Review: Elemental Sulphur From Canada*, 61 FR 8239, 8241–42 (March 4, 1996) ("*Elemental Sulphur From Canada*").

⁶¹ See Letter to the Department from STCC regarding "1-Hydroxyethylidene-1, 1-Diphosphoric Acid (HEDP) from the People's Republic of China: Response to 2nd Supplemental By-Product Questionnaire" (February 12, 2014) ("2nd By-Product Supplemental") at 2.

⁶² See *id.*

the decision as to the amounts of time and effort to expend in costing and tracking them, we consider STCC's treatment of acetyl chloride in its normal books and records, as compared to other minor products, an indication of its relative significance.

The second factor is the significance of each product relative to the other joint products. The significance of the various joint products produced impact the necessity of more detailed tracking of production activity, thus, resulting in the company-wide decision of whether to treat certain products as by-products versus co-products. In past cases, in assessing the significance of each product generated from a joint process, we have looked at the relative value for each of the products produced from the joint process stream.⁶³ While the relative value of the end products is important for financial reporting purposes, the relative values of the joint products at the split off point are more meaningful for assessing the significance of each product generated from the joint production process.⁶⁴ For purposes of this case, we analyzed the relative value of each product generated from the joint production based on the relative values for the products output from the joint process (*i.e.*, at the split-off point).

In assessing the significance of each product output from the split-off point, we attempted to obtain a reasonable market value for products produced, as close to the split off point as possible. As HEDP and acetyl chloride are the saleable products that result closest to the split-off point, we started with SVs from the selected surrogate country for these products, then reduced the values by the cost of further processing after the split-off point and the respective SVs from the selected surrogate country for each FOP. This analysis demonstrated that the net realizable value ("NRV") of acetyl chloride at the split-off point is significant.⁶⁵

The third and fourth factors that we use in determining whether joint products are main products or by-products are whether the product is an unavoidable consequence of producing another product and whether management intentionally controls the production of the joint products. If a product in question is avoidable, but is intentionally produced, it supports the notion that the product is a main product. If a product in question is not avoidable, it neither supports nor refutes a decision to treat a product as a main product or a by-product. As such, these factors look at whether management takes steps to minimize or maximize the output quantities of certain outputs. In this case, STCC cannot avoid or necessarily control the ratio of acetyl chloride coming out from the split-off point; thus, the output of each joint product is unavoidable.⁶⁶ That being said, these two factors neither support nor refute a decision to treat acetyl chloride as a main product or a by-product.

Finally, the last factor considers whether acetyl chloride requires significant further processing after the split-off point. This factor can have conflicting implications. For financial reporting purposes, this factor is relevant in that if there is significant further processing required, presumably the end product's value will increase to the point where its value may be significant

⁶³ See *Elemental Sulphur From Canada*.

⁶⁴ See *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 73 FR 52642 (September 10, 2008) ("*Magnesium Metal from Russia*") and corresponding Issues and Decision Memorandum at Comments 2 and 3.

⁶⁵ See Analysis Memorandum.

⁶⁶ See 2nd By-Product Supplemental at 3.

in relation to the other end products produced. On the other hand, however, the fact that a product output from the split-off point requires significant further processing may indicate that the value of the output product is minimal, with the bulk of its value being added by the further processing. As such, if a product in question undergoes significant further processing, it may support the notion that the product is a main product. However, if a product in question is not significantly further processed, it neither supports nor refutes a decision to treat a product as a main product or a by-product. In the instant case, acetyl chloride does not require further processing after the split-off point.⁶⁷

In summary, based on our analysis of the five factors above, we consider acetyl chloride to be a co-product at the split-off point. Specifically, the relative value at the split-off point is significant, and in its normal books and records STCC tracks production quantities, assigns a cost, and records acetyl chloride in inventory.⁶⁸ While the significance of further processing on its own does not refute or support a co-product or by-product treatment, acetyl chloride does not require further processing prior to sale.⁶⁹ Thus, taking all the factors into account, we consider it appropriate to allocate a portion of the FOPs through the split-off point to acetyl chloride. Accordingly, in these preliminary results, for all the reasons stated above, the Department will treat STCC's claimed by-product, acetyl chloride, as a co-product.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POR, we inflated the values.

We valued water using data from the Maharashtra Industrial Development Corporation⁷⁰ because it includes a wide range of industrial water tariffs. This source provides 377 industrial water rates within the Maharashtra province from April 2011: 189 for the “inside industrial areas” usage category, and 188 for the “outside industrial areas” usage category.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2013: India* by the World Bank.⁷¹

We valued inland truck freight expenses using a deflated per-unit average rate calculated from data on the following web site: <http://www.infobanc.com/logistics/logtruck.htm>.⁷² This source is the best available information to value truck freight because it is contemporaneous with the POR, represents a broad market average of multiple destinations, specific to the input being

⁶⁷ See *id* at 4.

⁶⁸ See *id* at 2-4.

⁶⁹ See *id* at 2.

⁷⁰ Website available at <http://www.midcindia.org>.

⁷¹ See SV Memorandum.

⁷² See *id*.

valued, and contains numerous data points by which the Department was able to calculate the SV for truck freight.⁷³

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.⁷⁴ In *Labor Methodologies*, the Department explained that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.⁷⁵ Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).⁷⁶ The latest year for which ILO Chapter 6A reports national data for India is 2005.

The Department finds the two-digit description under Division 24 (*i.e.*, Manufacture of Chemicals and Chemical Products) of the ISIC-Revision 3 to be the best available information on the record because it is most specific to the industry being examined and, therefore, is derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Division 28 of ISIC-Revision 3 standard, in accordance with section 773(c)(4) of the Act. A more detailed description of the labor rate calculation methodology is provided in the SV Memorandum. We find that this information constitutes the best available information on the record because it is the most contemporaneous data available for the POR and, thus, more accurately reflective of actual wages in India for the industry being examined.

Therefore, for the preliminary results, we calculated the labor inputs using the data for the average monthly industrial labor rate prevailing during 2005 in India, corresponding to the “Manufacturing” economic sector, and adjusted to current price levels using the Indian Consumer Price Index. A more detailed description of the labor rate calculation methodology is provided in the SV Memorandum.⁷⁷

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the contemporaneous audited financial statements of Excel Industries, which is an Indian producer of identical merchandise.⁷⁸

⁷³ See, e.g., *Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part*, 75 FR 5952 (February 5, 2010); unchanged in *Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010); see also SV Memorandum.

⁷⁴ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

⁷⁵ See *id.*, 76 FR at 36093.

⁷⁶ See *id.*

⁷⁷ See SV Memorandum.

⁷⁸ See *id.*

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Recommendation

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Date